



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Information Technology Solutions, Inc.

File: B-256133

Date: May 5, 1994

DECISION

Information Technology Solutions, Inc. protests the award of a contract to Reflectone Training Systems under request for proposals (RFP) No. N61339-93-R-0013, issued by the Department of the Navy for contractor operation and maintenance services for simulators and support equipment for the F/A-18 aircraft. Information Technology claims that its proposal was improperly rejected as unrealistically low priced.

We dismiss the protest.

The RFP provided that award would be made to the responsible offeror which submitted a technically acceptable proposal offering the lowest reasonable and realistic price. The RFP stated that prices evaluated as unrealistically low would not be adjusted upward but may result in an unacceptable rating because they represent a poor performance risk.

Five proposals were received by the closing date, and after initial evaluations, four of these, including proposals from Information Technology and Reflectone, were evaluated as being susceptible to being made acceptable and included in the competitive range. The agency conducted discussions with all four firms, issuing three rounds of deficiency notices and a request for best and final offers (BAFO). With each deficiency notice, offerors were warned that failure to correct the deficiencies may result in elimination of the proposal from the competitive range.

Upon evaluation of BAFOs, three proposals were determined to be technically acceptable and one, Information Technology's proposal, was found technically unacceptable. In addition, based on its price analysis, the agency concluded that Information Technology's price was unrealistically low and represented an unacceptable risk of poor performance. As a result, Information Technology's proposal was removed from consideration for award.

By letter dated December 20, the agency notified Information Technology that based on a price realism analysis, the

protester's proposed price was determined to be unrealistically low and, thus, represented "an unacceptable risk of poor performance." Additionally, the agency stated that Information Technology's technical proposal failed to satisfy the agency's requirements. Specifically, the December 20 letter stated that Information Technology's proposal failed to (1) demonstrate that adequate personnel were proposed to perform tasks associated with security, janitorial, administrative and other work, as required by the RFP, (2) identify software experience of proposed computer specialists, and (3) demonstrate that its proposed operator manning will meet all device requirements for operators. The agency stated that award was made to Reflectone at a price of \$16,351,196.

In a December 22 letter, Information Technology requested additional information from the contracting officer concerning the agency's rejection of its proposal. The protester specifically asked if its proposal was technically acceptable or unacceptable. By letter dated January 4, the agency responded that, as indicated in its letter of December 20, Information Technology's "proposal was determined both to be technically unacceptable . . . and to represent an unacceptable risk of poor performance after a price realism was completed."

In its protest to our Office, filed December 29, Information Technology complained that the agency failed to award the contract to the lowest-priced offeror, as required by the solicitation, and that the agency improperly found its price unrealistic. Specifically, the protester argued that when a 10 percent small disadvantaged business preference is applied to Reflectone's price, Reflectone's price is higher than Information Technology's price.¹ The protester also argued that its price is realistic and questioned how the agency could judge its price to be unrealistic yet award to Reflectone at a lower price. The protester also argued that Reflectone's price appears materially unbalanced.²

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement.

¹The solicitation contained the clause at Defense Federal Acquisition Regulation Supplement § 252.219-7006, which provides for a 10 percent evaluation factor to be added to offers from firms that are not small disadvantaged businesses.

²In its protest, Information Technology did not challenge the determination that its proposal was technically unacceptable.

That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1993). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised; the benefit of relief sought by the protester; and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

Here, Information Technology was informed that its proposal was rejected not only on the basis of its unrealistically low price but also because it was technically unacceptable. Yet, Information Technology did not timely challenge the technical evaluation of its proposal.³ Since there are two other technically acceptable proposals in addition to the awardee's proposal, even if we were to sustain Information Technology's allegation that the agency's price realism analysis was flawed or its allegation that the awardee's price is unbalanced, Information Technology would not be in line for award. Under these circumstances, Information Technology is not an interested party to protest the award. Monopole, S.A., B-252745, July 23, 1993, 93-2 CPD ¶ 51.

Accordingly, the protest is dismissed.



John Van Schaik
Acting Assistant General Counsel

³In its March 4, 1994, comments on the agency report Information Technology for the first time argues that its technical proposal was acceptable and that the agency was biased in its evaluation. Under our Bid Protest Regulations, protests other than those based on apparent improprieties in a solicitation, shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, at the latest, Information Technology was aware of the determination that its proposal was unacceptable when it received the agency's January 4 letter and should have raised that issue within 10 working days of receipt of that letter. Because the protester did not question the technical evaluation of its proposal until March 4, its protest on this issue is untimely and will not be considered. Laser Diode, Inc., B-249990, Dec. 29, 1992, 93-1 CPD ¶ 18.